

General Information Letter: Characterization of limited liability company as corporation.

August 17, 1998

Dear:

This is in response to your letter dated March 11, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter (GIL) which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

As the Manager of Finance xxx xxxxx xxxxxxxxxxx xxxxxxxxxxx, x.x.x., I am requesting information for the filing of the applicable state tax returns for all taxes which are levied in your state. Given the following circumstances of xxxxx xxxxxxxxxxx xxxxxxxxxxx, x.x.x. could you please inform me of the company's tax responsibilities with your state?

Circumstances

The company was registered xxxxx xx, 1995 as a New Jersey limited liability company with a fiscal year end of September 30 and has filed with the Secretary of State to do business within your state. The main business location and office is in Pennsylvania with a Distribution Center in Illinois, and there are salesmen who reside in Illinois. The company distributes the following chemicals:

1. Caustic/Sodium Hydroxide
2. Sulfuric Acid
3. Hydrochloric Acid
4. Potassium Sorbate

The company will refill tanks kept at the customer's site on a periodic basis utilizing its trucks. The tanks, costing about \$1,000 each, may be owned by the company or the customer

Sales Tax

Does the company need to charge customers sales tax on the sale of the:

1. Chemicals
2. Tanks

If yes, could you please mail me a tax booklet?

Does your state allow counties to levy their own sales tax above the State's? If yes, could you please send a schedule of each counties rate?

Registration

Is there a general registration form that needs to be filed with your state?

Business Tax

Does your State recognize the L.L.C. as pass through entity?

If yes:

- A. What tax form is files?
- B. Is the September 30 year-end recognized?
- C. Could you please mail me a tax booklet?

If no:

- A. Can the business file for Sub "S" status?
- B. How should the company file its business income tax return in your State?
- C. Could you please mail me a tax booklet?

Personal Property Tax

Does your state have a personal property tax (presumably on the tanks that will be owned by xxxxx xxxxxxxxx xxxxxxxxx, x.x.x.) situated at customer locations in your state?

If yes, could you please send me a tax booklet?

Hazardous Chemical or Spill Tax

xxxxx xxxxxxxxx xxxxxxxxx, x.x.x. will be transporting the chemicals listed on page one either through your state or to customers within your state. Are there any taxes related to this activity? If yes, could you please explain and could you please send me a tax booklet?

Other Taxes

Please inform me regarding any other taxes which apply to this business activity.

Ruling

Only your questions relating to Illinois income tax are addressed by this GIL; namely, the questions under your labels "Business Tax" and "Personal Property Tax." A response to the remaining questions raised by your letter will be forwarded under separate cover by the Department's sales tax division.

Section 201(a) of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 et seq.) imposes a tax measured by net income on every individual, corporation, trust and estate on the privilege of earning or receiving income. In the case of a corporation, the tax there imposed is assessed at the rate of 4.8 percent. Section 205(c) of the IITA, however, exempts a Subchapter S corporation from the income tax imposed by section 201(a).

In addition to the income tax imposed by section 201(a), section 201(c) of the IITA imposes the Personal Property Tax Replacement Income Tax (RIT) measured by net income on every corporation (including Subchapter S corporations), partnership and trust. The RIT is assessed at the rate of 2.5% in the case of a C corporation and 1.5% in the case of a Subchapter S corporation or partnership.

The IITA further provides as follows:

Any entity ... shall be treated as a corporation if it is so classified for federal income tax purposes (IITA §1501(a)(4)).

Any entity ... shall be treated as a partnership if it is so classified for federal income tax purposes (IITA §1501(a)(16)).

The term "Subchapter S corporation "means a corporation for which there is in effect an election under Section 1362 of the Internal Revenue Code (IITA 1501(a)(28)).

Accordingly, the extent to which a limited liability company (LLC) will be subject to an entity level tax on its income in Illinois depends upon its classification for federal income tax purposes. If the LLC is treated as a corporation for federal income tax purposes, then the entity will be subject to tax on its net income under both sections 201(a) and 201(c) of the IITA. On the other hand, if the LLC is treated as a partnership for federal income tax purposes, then the entity will be subject to tax on its net income only under IITA section 201(c). Finally, if the LLC is treated as a Subchapter S corporation for federal income tax purposes, the entity will be subject to tax on its net income only under IITA section 201(c).

A corporation must report its Illinois net income on Form IL-1120. A Subchapter S corporation must report its Illinois net income on Form IL-1120-ST. A partnership must report its Illinois net income on Form IL-1065.

Section 401(a) of the IITA states as follows:

[T]he taxable year of a person shall be the same as the taxable year of such person for federal income tax purposes. The taxable year of any person required to file a return under this Act but not under the Internal Revenue Code shall be his annual accounting period if it is a fiscal or calendar year, and in all other cases shall be the calendar year.

Accordingly, provided xxxxx xxxxxxxxx xxxxxxxxx, x.x.x. taxable year ending September 30 is recognized for federal income tax purposes, the same will be recognized for Illinois income tax purposes.

Illinois tax forms and schedules can be obtained by writing to the Illinois Department of Revenue, PO Box 19010, Springfield, Illinois 62794-9010; or by calling 1 800-356-6302.

Illinois does not maintain a personal property tax.

Illinois does maintain a franchise tax that may apply to xxxxx xxxxxxxxx xxxxxxxxx, x.x.x. Information regarding Illinois franchise tax can be obtained from the Illinois Secretary of State by writing the following address.

Office of the Illinois Secretary of State

Department of Business Services
Room 328
Springfield, IL 62756

As stated above, this is a GIL that does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding our factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of section 1200.110(b).

Sincerely,

Brain L. Stocker
Staff Attorney - Income Tax